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8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**  
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11 MARIO HERRADA-GONZALEZ,

12 Petitioner,

13 v.

14 JERRY HOWELL, et al.,

15 Respondents.  
16

Case No. 2:20-cv-01013-GMN-DJA

**ORDER**

17 The Federal Public Defender has filed a notice of appearance on petitioner's behalf (ECF  
18 No. 8). The court will formally appoint the Federal Public Defender.

19 Petitioner also has filed a motion for leave to file first amended protective petition (ECF  
20 No. 9) and a motion for scheduling order (ECF No. 10). The court grants these motions.

21 IT THEREFORE IS ORDERED that the Federal Public Defender is appointed as counsel  
22 for petitioner pursuant to 18 U.S.C. § 3006A(a)(2)(B). Counsel will represent petitioner in all  
23 federal proceedings related to this matter, including any appeals or certiorari proceedings, unless  
24 allowed to withdraw.

25 IT FURTHER IS ORDERED that petitioner's motion for leave to file first amended  
26 protective petition (ECF No. 9) is **GRANTED**. Petitioner must file the counseled first amended  
27 protective petition and supporting exhibits within seven (7) days from the date of entry of this  
28 order.

1 IT FURTHER IS ORDERED that petitioner's motion for scheduling order (ECF No. 10)  
2 is **GRANTED**.

3 IT FURTHER IS ORDERED that petitioner will have until up to and including one  
4 hundred twenty (120) days from entry of this order within which to file a second amended  
5 petition and/or seek other appropriate relief. Neither the foregoing deadline nor any extension  
6 thereof signifies or will signify any implied finding as to the expiration of the federal limitation  
7 period and/or of a basis for tolling during the time period established. Petitioner always remains  
8 responsible for calculating the running of the federal limitation period and timely asserting  
9 claims, without regard to any deadlines established or extensions granted herein. That is, by  
10 setting a deadline to amend the petition and/or by granting any extension thereof, the court makes  
11 no finding or representation that the petition, any amendments thereto, and/or any claims  
12 contained therein are not subject to dismissal as untimely. See Sossa v. Diaz, 729 F.3d 1225,  
13 1235 (9th Cir. 2013).

14 IT FURTHER IS ORDERED that respondents must file a response to the second amended  
15 petition, including potentially by motion to dismiss, within sixty (60) days of service of a second  
16 amended petition and that petitioner may file a reply within thirty (30) days of service of an  
17 answer. The response and reply time to any motion filed by either party, including a motion filed  
18 in lieu of a pleading, will be governed instead by Local Rule LR 7-2(b).

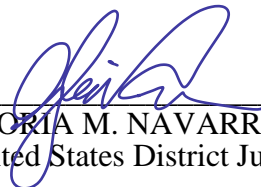
19 IT FURTHER IS ORDERED that any procedural defenses raised by respondents to the  
20 counseled second amended petition must be raised together in a single consolidated motion to  
21 dismiss. In other words, the court does not wish to address any procedural defenses raised herein  
22 either in serial fashion in multiple successive motions to dismiss or embedded in the answer.  
23 Procedural defenses omitted from such motion to dismiss will be subject to potential waiver.  
24 Respondents must not file a response in this case that consolidates their procedural defenses, if  
25 any, with their response on the merits, except pursuant to 28 U.S.C. § 2254(b)(2) as to any  
26 unexhausted claims clearly lacking merit. If respondents do seek dismissal of unexhausted claims  
27 under § 2254(b)(2): (a) they must do so within the single motion to dismiss not in the answer; and  
28 (b) they must specifically direct their argument to the standard for dismissal under § 2254(b)(2)

1 set forth in Cassett v. Stewart, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural  
2 defenses, including exhaustion, must be included with the merits in an answer. All procedural  
3 defenses, including exhaustion, instead must be raised by motion to dismiss.

4 IT FURTHER IS ORDERED that, in any answer filed on the merits, respondents must  
5 specifically cite to and address the applicable state court written decision and state court record  
6 materials, if any, regarding each claim within the response as to that claim.

7 IT FURTHER IS ORDERED that, notwithstanding Local Rule LR IC 2-2(g), paper copies  
8 of any electronically filed exhibits need not be provided to chambers or to the staff attorney,  
9 unless later directed by the court.

10 DATED: July 8, 2020

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13 GLORIA M. NAVARRO  
14 United States District Judge  
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